

88-103

NO. _____

Supreme Court, U.S.

FILED

JUL 14 1988

JOSEPH F. SPANIOLO, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1987

STATE OF ALABAMA,

Petitioner

v.

RONALD WEEKS,

Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ALABAMA

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ALABAMA ATTORNEY GENERAL

RIVARD DONALD MELSON
ASSISTANT ALABAMA ATTORNEY
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ATTORNEYS FOR PETITIONER

QUESTIONS PRESENTED

I. Should this Court grant certiorari to resolve a split among the lower courts regarding the nature of an inducement sufficient to render a confession involuntary under the Fifth and Fourteenth Amendments?

II. Does the failure of the lower court to state any constitutional basis, federal or state, for its decision deprive this Court of jurisdiction over this issue?

PARTIES

The caption contains the names of all parties in the proceedings in the courts below.

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OPINIONS BELOW

1. The opinion of the Supreme Court of Alabama reversing respondent's conviction is not yet reported, but is reproduced as Appendix A to this petition.¹

¹The appendix to this petition is separately bound pursuant to Rule 21.1(k).

JURISDICTION

The judgment of the Supreme Court of Alabama which is sought to be reviewed was rendered on April 15, 1988. See Appendix A. On June 2, 1988, this Court granted petitioner's application for an extension of time to file this petition, extending said time to July 14, 1988. This Court has jurisdiction under 28 U.S.C. §1257(3).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution,
Amendment V (in pertinent part)

...; nor shall [any person] be compelled in any criminal case to be a witness against himself, ...

United States Constitution,
Amendment XIV (in pertinent part)

...; nor shall any state deprive any person of life, liberty, or property, without due process of law;
...

STATEMENT OF THE CASE

A. STATEMENT OF THE FACTS

During the course of a conversation with respondent (defendant below) regarding respondent's possession of a pistol taken during a burglary, Sheriff's Investigator Lance Monley told respondent that he wanted respondent's cooperation in the burglary investigation and that if he confessed to his part in the crime, he, Monley, would make this known to the district attorney (T.R. 21-27; Appendix B, pp. 12-13). Respondent afterwards told Monley that he bought the pistol from a man named Wasp, and that he knew when he bought the gun that the serial number had been removed from it (T.R. 27-30; Appendix B, pp. 15-18).

B. PROCEEDINGS BELOW

Respondent was subsequently indicted by the Grand Jury of Baldwin County, Alabama, for receiving, retaining, or disposing of stolen property in the second degree in violation of Code of Alabama 1975, §13A-8-18 (T.R. 134). During the trial for the offense the incriminating statement to Monley was admitted into evidence over proper objection (T.R. 25-29; Appendix B, pp. 11-21). Respondent was convicted of this crime, and sentenced to five years imprisonment (T.R. 132, 140).

The conviction was appealed to the Court of Criminal Appeals of Alabama, which affirmed it without opinion. Ronald Weeks v. State, 1 Div. 211 (Ala.Cr.App. May 26, 1987). The

decision of the Court of Criminal Appeals was reversed by the Supreme Court of Alabama, which held that Monley's statement to respondent constituted an inducement which rendered the confession involuntary (Appendix A). The Supreme Court of Alabama did not state whether its finding of involuntariness was based on federal or state law (see Argument II below).

REASONS FOR GRANTING THE WRIT

- I. THE COURT SHOULD GRANT CERTIORARI TO RESOLVE A SPLIT AMONG THE LOWER COURTS REGARDING THE NATURE OF AN INDUCEMENT SUFFICIENT TO RENDER A CONFESSION INVOLUNTARY UNDER THE FIFTH AND FOURTH AMENDMENTS

In Bram v. United, 168 U.S. 532 (1897), this Court stated, regarding the Fifth Amendment, that

...a confession in order to be admissible must be free and voluntary; that is, must not be extracted by any sort of threats or violence, nor obtained by any direct or implied promises, however slight, nor by the exertion of any improper influence ..."

Id., at 542-543 (emphasis added).

This general rule has been repeated by the Court in recent years. Hutto v. Ross, 429 U.S. 28, 30 (1976). The Court has often held, however, that the question of the voluntariness of any particular confession is to be determined from the totality of the circumstances. E.g., Miller v. Fenton, 474 U.S. 104, 117 (1985); Schneekloth v. Bustamonte, 412 U.S. 218, 226-227 (1973); Boulden v. Holman, 394 U.S. 478 (1969); Haynes v. Washington, 373 U.S. 503, 513 (1963);

Culombe v. Connecticut, 367 U.S. 568,
601-602 (1961).²

In the case at bar the Supreme Court of Alabama held involuntary a confession made after respondent was told by a law enforcement officer that the officer wanted respondent's cooperation in the case and that if respondent confessed to his part in the crime the officer would make this known to the district attorney.

(Appendix A). The Alabama court held that the "express promise" it found in the case engendered a hope of favor in the suspect's mind sufficient to induce his confession (Appendix A).

²Even after the Fifth Amendment was held to be applicable to the States, the Court has continued to judge voluntariness under the due process clause of the Fourteenth Amendment. Miller v. Fenton, 474 U.S. 104, 110 (1985).

It is the rule in a large number of jurisdictions that the statement by an officer that cooperation by a suspect will be made known to the prosecutor or to the court does not alone render a confession involuntary. Williams v. Johnson, 845 F.2d 907 (11th Cir. 1988); United States v. Guarno, 819 F.2d 28 (2nd Cir. 1987); Miller v. Fenton, 796 F.2d 598 (3rd Cir. 1986), cert. denied, ____ U.S. ____, 107 S.Ct. 585 (1987); Barbara v. Young, 794 F.2d 1264 (7th Cir. 1986); Rachlin v. United States, 723 F.2d 1373 (8th Cir. 1983); United States v. Ballard, 586 F.2d 1060 (5th Cir. 1978); United States v. Curtis, 562 F.2d 1153 (9th Cir. 1977); Commonwealth v. Shine, 398 Mass. 641, 500 N.E.2d 1299 (1988); Hoey v. State, 311 Md. 473, 536 A.2d 622 (1988);

Commonwealth v. Clark, 516 Pa. 599,
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(Fla. 1980); State v. Young, 33 N.C.
App. 689, 236 S.E.2d 309 (1977).

The reasoning behind the numerous cases cited above is obvious. There was no promise of benefit offered, only a statement that a communication would be made, with no particular expectation of results. Moreover, any thinking criminal suspect is aware that the existence of an incriminating

statement will be communicated to the prosecuting attorney in any case; thus any "promise" is really a statement of what will occur regardless.

Moreover, it is clear from the facts of this case that Monley's statement did not induce the incriminating statement here. Monley told respondent that he wanted him to confess his part in a burglary. Respondent denied any involvement in a burglary, stating instead that he had bought the gun from a man named Wasp (T.R. 27-30; Appendix B, pp. 15-18). Respondent reemphasized that he had bought the gun even after stating that at the time he bought it the gun's serial number had been obscured (T.R. 27-30; Appendix B, pp. 15-18). It is clear that respondent thought he was making no incriminating statement at

all, but was only admitting an innocent act.

The holding in this case is contrary to that of the majority of courts which have considered the question of whether a statement similar to Investigator Monley's was sufficient in and of itself to render a confession involuntary. It is also inconsistent with the repeated principle of this Court that voluntariness depends on the totality of the circumstances, because the circumstances here indicate that respondent's inadvertently incriminating statement was not in fact induced by Monley's urging him to confess to the burglary.

Because of the split between the Alabama Supreme Court and the courts of numerous other jurisdictions, and because the Alabama Supreme Court has

ignored this Court's precedents regarding the totality-of-the-circumstances test, the Court should grant certiorari to decide whether, under the Fifth and Fourteenth Amendments, the statement made to respondent here regarding communication to the prosecutor of his cooperation rendered his confession involuntary and thus inadmissible.

II. THE FAILURE OF THE LOWER COURT TO MENTION THE FEDERAL CONSTITUTION AS THE BASIS FOR ITS DECISION DOES NOT DEFEAT THIS COURT'S JURISDICTION

Respondent might well point out that in its opinion the Supreme Court of Alabama did not mention any provision of the Federal Constitution as the basis for its decision, and might urge the Court to deny certiorari for this reason. A careful reading of the

opinion, however, reveals no particular constitutional or statutory ground, state or federal, for the holding regarding voluntariness.

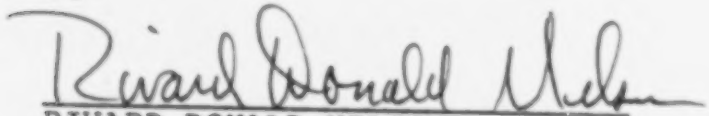
This Court has held recently that it will assume a constitutional basis for jurisdiction where the adequacy and independence of any possible state court ground is not clear from the face of the opinion. Michigan v. Long, 463 U.S. 1032, 1040-1041 (1983). Voluntariness of a confession is an issue under the Fifth and Fourteenth Amendments of the Federal Constitution. Miller v. Fenton, 474 U.S. 104, 116 (1985). Because the Supreme Court of Alabama did not indicate clearly that its test for voluntariness arose solely from state law, this Court should assume that the lower court's decision rested on federal law.

CONCLUSION

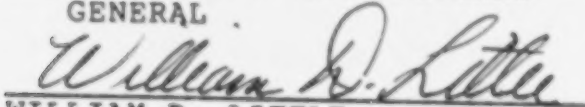
For the above reasons the Court should grant certiorari to decide the important federal question presented in this case.

Respectfully submitted,

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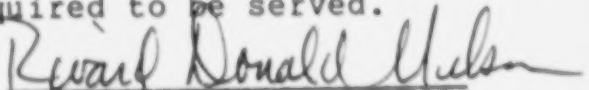
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CERTIFICATE OF SERVICE

I, Rivard Donald Melson, a member of the Bar of the Supreme Court of the United States, do hereby certify that on this 14th day of July, 1988, I did serve three copies of this petition and the accompanying appendix on respondent, by placing said copies in the United States Postal Service, first-class postage prepaid, and properly addressed as follows:

Hon. Greg F. Jones
Wilkins, Bankester, & Biles, P.A.
P.O. Box 1140
Bay Minette, Alabama 36507

I further certify that I have served all parties required to be served.


DONALD RIVARD MELSON

ATTORNEY FOR PETITIONER